In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.10999 of 2004

Date of Decision: 21.11.2006

Onkar Dutt Sharma …Petitioner.

Versus

Uttar Haryana Bijli Vitran Nigam Limited & Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE M.M.S.BEDI

Present: Mr.Jagbir Malik, Advocate for the Petitioner.

Mr.Gurinderjeet Singh, Advocate for the Respondents.

JUDGMENT

M.M.KUMAR, J.

The petitioner has approached this Court with a prayer for issuance of direction to respondents Nos.1 to consider him for the promotion to the post of Assistant Engineer with effect from the date persons junior to him from the rank of Junior Engineer have been promoted with all consequential benefits.

Brief facts of the case necessary for disposal of the controversy raised in this petition are that the petitioner was appointed on 10.4.1973 on the post of Assistant Foreman on regular basis. He was promoted as Junior Engineer on 1.1.1983. He has claimed that respondents No.6 to 14 have

been junior to him in the rank of Junior Engineer as per the seniority list dated 30.7.2002 (Annexure P1). The name of the petitioner in the seniority list appears at Sr.No.6, whereas that of respondents No.6 to 14 are at Sr.No.9, 10, 11, 12, 13, 15 & 16, respectively. On 20.4.1999, a charge sheet was served upon the petitioner under regulation 7 of the Haryana State Electricity Board/Nigam (Punishment & Appeal) Regulation, 1990. The petitioner filed reply to the aforementioned charge sheet on 22.9.1999 (Annexure P3). On 28.12.1999 without holding any enquiry and after consideration of his reply the respondent stopped two annual grade increments of the petitioner without future effect (Annexure P4). On 20.8.2001 the petitioner was placed under suspension with immediate effect on the direction issued by Hon'ble the Chief Minister Haryana as one Dharam Singh had levelled allegation of accepting illegal gratification by the petitioner. He was reinstated in service on 17.1.2002 (Annexure P6). Again a charge sheet was served upon him on 27.8.2002 (Annexure P7). On 23.5.2003, respondent No.1 promoted private respondents No.6 to 10 on the post of Assistant Engineer and the case of the petitioner for promotion was deferred as is evident from the order of promotion dated 23.5.2003 (Annexure P9). In Clause 7 of the order, it has been held that the name of the petitioner ranking at Sr.No.6 of the rank list has been deferred for promotion due to pending charge sheet and punishment of stoppage of two increments without future effect. On 14.7.2003 the charge sheet dated 27.8.2002 issued against the petitioner was dropped (Annexure P10). The petitioner represented on 14.7.2003 with a prayer to promote him on the post of Assistant Engineer w.e.f. 23.5.2003 when persons junior to him i.e. Respondents No.6 to 10 were promoted (Annexure P11). He submitted another representation dated 29.7.2003 claiming the same relief. Despite the claim made by the petitioner another set of 11 Junior Engineers who were ranking below the petitioner were further promoted as Assistant Engineer on the same excuse (Annexure P13). On 7.8.2003 the petitioner again submitted a representation clarifying the whole

factual position. It was pointed out that the punishment of stoppage of two increments was imposed on 28.12.1999 and the aforementioned period came to an end at best in December 2001. The subsequent charge sheet dated 27.8.2002 was also dropped. The suspension period of the petitioner was regularized vide order dated 8.8.2003 (Annexure P16). Despite that respondents promoted another Junior Engineer respondent No.12 on the post of Assistant Engineer superseding the petitioner by citing the same reason. Eventually the petitioner served legal notices upon respondents through his learned counsel on 10.3.2004 and 16.4.2004 (Annexures P18 & P19), respectively, and respondent had still promoted respondents No.13 & 14 to the post of Assistant Engineer deferring the case of the petitioner on the excuse that two charge sheets were contemplated (Annexure P20).

Respondents No.1 to 5 have filed their written statements. The stand taken by the respondents is that vigilance enquiry is still pending against the petitioner. It is further conceded that the punishment of stoppage of two increments without cumulative effect inflicted vide order dated 28.12.1999 was to operate for two years and its effect came to an end on 30.4.2002. It has been asserted that one increment was also stopped without future effect vide order dated 2.1.2003 which was still operating on 23.5.2003 and the petitioner was facing disciplinary proceedings as per charge sheet dated 27.8.2002.

When the matter came up for hearing on 20.11.2006 we were shown an order dated 5.10.2006 by the learned counsel for the petitioner which reveals that the case of the petitioner has been considered and deferred for promotion due to poor record of service which is taken on record as Mark 'A'. It is conceded fact in the reply that no case was pending against the petitioner as on 22.5.2003. Accordingly, we directed the learned counsel for respondents to produce his service record which we have perused. As per the A.C.R. from the year 1991 to 2002 nothing adverse has been found. The summary of his A.C.R. from 1991 to 2002 is as under:-

"**1. <u>Shri Onkar Dutt Sharma JE(F) (Seniority No.6)</u>**

D.O.B. 01.07.1952

D.O.J. Present Post 01.01.1983

Qualification B.E. Degree

Date of Retirement 30.06.2010

Sr.No.	Period of ACRs	Assessment	Integrity
1	1.4.1991 to 31.3.1992	Very Good	Honest
2	1.4.1992 to 31.3.1993	Not Available	
3	1.4.1993 to 31.3.1994	Not Available	
4	1.4.1994 to 4.9.1994 5.9.1994 to 31.3.1995	Not Available Very Good	 Honest
5	1.4.1995 to 31.3.1996	Good	Honest
6	1.4.1996 to 6.8.1996 12.9.1996 to 31.3.1997	Good Good	Honest Honest
7	1.4.5.97 to 31.3.98	Good	Honest
8	1.4.1998 to 21.9.1998 22.9.1998 to 31.3.1999	Not Available Good	 Honest
9	1.4.1999 to 31.3.2000	Good	Honest
10	1.4.2000 to 31.3.2001	V. Good	Honest
11	1.4.2001 to 20.8.2001 21.8.2001 to 31.3.2002	Good Not Available	Honest

However, it has been asserted that on 4.3.1999 one increment of the petitioner without future effect was stopped. It is also pointed out that two increments without future effect were stopped on 22.3.2002 and one increment was stopped without any future effect on 2.1.2003. The official record further shows that before the Departmental Promotion Committee it was represented that a charge sheet dated 27.8.2002 was pending against the petitioner in August 2003 and the punishment of stoppage of increment was still in operation. The summary of his A.C.R. along with the punishment awarded read as under:-

"**1. <u>Shri Onkar Dutt Sharma JE(F) (Seniority No.6)</u>**

D.O.B. 01.07.1952

D.O.J. Present Post 01.01.1983

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3	1.4.1993 to 31.3.1994	Not Available	
4	1.4.1994 to 4.9.1994 5.9.1994 to 31.3.1995	Not Available Very Good	 Honest
5	1.4.1995 to 31.3.1996	Good	Honest
6	1.4.1996 to 6.8.1996 12.9.1996 to 31.3.1997	Good Good	Honest Honest
7	1.4.5.97 to 31.3.98	Good	Honest
8	1.4.1998 to 21.9.1998 22.9.1998 to 31.3.1999	Not Available Good	 Honest
9	1.4.1999 to 31.3.2000	Good	Honest
10	1.4.2000 to 31.3.2001	V. Good	Honest
11	1.4.2001 to 20.8.2001 21.8.2001 to 31.3.2002	Good Not Available	Honest

Overall assessment

Total ACRs 10 ;Nos.

Good/V.Good ACRs 7 ½ Nos.

%age of Good/V.Good ACRs 75% on available ACRs

INTEGRITY

There is nothing adverse regarding his integrity in his available ACRs.

Pending disciplinary cases

A Charge sheet bearing No.85/EPF-3432 dated 27.8.2002 is pending against the official.

Punishment awarded, if any

1. Charge sheet No.148/EP-9772 dated 29.7.1998 decided by stoppage of one increment without future effect vide Superintending Engineer/OP Karnal O/O No.55/t DATED 4.3.1999.
2. Charge sheet No.110/LS-1945 dated 22.11.1999 ; decided by stoppage of 2 increments without future effect

vide Chief Engineer/OP, Panchkula office order No.695/EPF-3281 dated 22.3.2002.

3. SCN No.278/EP 9772 dated 22.3.2002 decided by stoppage of one increment without future effect vide Superintending Engineer/OP, Karnal office order No.4/T dated 2.1.2003.

From the above, it is evident that a charge sheet dated 27.8.2002 is pending against the official and the punishment of stoppage of increment is still running the course. As such he is not eligible for promotion to the rank of Assistant Engineer and accordingly he is deferred for promotion".

Accordingly, the petitioner was ignored for promotion in August 2003, 22.9.2004, July 2005, January 2006, April 2006 and October 2006. It would be pertinent to mention that when the case of the petitioner was considered in October 2006 he has been assessed very good for the period from 1.4.2002 to 30.9.2002 and good for the period from 18.9.2002 to 31.3.2003. He has again been assessed as very good for the period from 1.4.2003 to 3.10.2003 and good for the period from 14.11.2003 to 24.2.2004. He has always been found to be honest.

Mr.Jagbir Malik, learned counsel for the petitioner argued that as per the record dated 18.8.2006 produced by the respondents, punishment of stoppage of one increment without future effect imposed on the petitioner on 4.3.1999 and another increment stopped without future effect on 25.5.2002 have been repeated. On 10.11.2005, he was administered a warning. He has also pointed out that some vigilance enquiry is stated to be pending against the petitioner bearing No.780553 dated 30.9.2002 and he was placed under suspension but thereafter reinstated on 20.1.2006. Learned counsel has maintained that in respect of the aforementioned enquiry a letter was addressed by the Executive Engineer to the Sub Divisional Officer, Israna. He categorically replied by stating that there is no

material to frame a draft charge sheet against the petitioner. He has also referred to the punishment of stoppage of two increments without future effect awarded on 28.12.1999. According to the learned counsel, firstly nothing was pending against the petitioner on 22.5.2003 when persons junior to him were given promotion as is evident from the perusal of order dated 23.5.2003 (Annexure P9). He has further submitted that even after 23.5.2003 he was only administered a warning on 10.11.2005 and a vigilance enquiry was kept pending without issuing any charge sheet. According to the learned counsel, warning cannot be an obstruction for consideration of his case for promotion. He has also placed reliance on a judgment of Hon'ble the Supreme Court in the case of **"Union of India v. K.V.Jankiraman" 1991(3) S.C.T. 317 (SC)** and argued that promotion can only be deferred when charge sheet in a disciplinary proceedings has been issued. In the absence of the charge sheet and mere pendency of disciplinary proceedings would not warrant suppression of employee for promotion.

Mr.Gurinderjeet Singh, learned counsel for the respondents has, however, argued that this Court cannot act as a Court of Appeal on the decision taken by the Departmental Promotion Committee and on a subjective consideration it has come to the conclusion that the record of the petitioner is poor and he deserved to pass over. He has, thus, argued that the record of the petitioner is such that he does not deserve to be promoted.

After hearing learned counsel for the parties and taking into consideration totality of the facts and circumstances of the case, we are of the considered view that this petition merits acceptance. It is true that the petitioner has been awarded punishment of stoppage of one increment without future effect on 4.3.1999, likewise two increments on 28.12.1999 and one increment on 2.1.2003. But the effect of both the orders passed in 1999 came to an end on 28.12.2001. However, the effect of stoppage of one increment imposed on 2.1.2003 remained in operation till 2.1.2004. Therefore, rejection of his case after January 2004 is wholly unjustified. The

excuse to pass him over for promotion thereafter is that some vigilance enquiry bearing No.780553 dated 30.9.2002 was pending. It is conceded position that no charge sheet could be framed so far. On the basis of the aforementioned excuse the case of the petitioner cannot be ignored for promotion as it has been held by Hon'ble the Supreme Court in **K.V.Jankiraman's case** (supra) that no enquiry could be deemed to be pending unless a charge sheet has been issued to an employee. The aforementioned view is evident from the perusal of para 16 of the judgment and the same reads as under:

> "The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many ;cases. As has been the experience so far, the preliminary investigations taken an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the

authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy".

Thus, it is evident that despite the efforts made by the respondents no charge sheet could be framed and the matter has been kept pending since the year 2002. As is evident from the perusal of the record, on 28.9.2006 the Sub Divisional Engineer, Israna, expressed his inability to frame any draft charge sheet. In the absence of any charge sheet no enquiry could be deemed to be pending against the petitioner.

On principle as well as on precedents, it is, thus, evident that the case of the petitioner for promotion to the post of Assistant Engineer requires to be considered after January 2004 when the cases of his juniors were considered and promotion was given to them. Accordingly, the writ petition is allowed and a direction is issued to the respondent to consider the case of the petitioner for promotion to the post of Assistant Engineer with effect from the date persons junior to him have been considered and the needful shall now be done within the period of three months from the date of receipt of a certified copy of the judgment.

The writ petition stands disposed of.

(M.M.KUMAR)
Judge

November 21, 2006 **(M.M.S.BEDI)**
dkb **Judge**